## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

JOSLYNN TERRELL, Individually and	§	
as Representative of the Estate of	§	
JAMAAL R. VALENTINE, Deceased;	§	
ANGELA BUTLER, as next friend	§	
of J.V. and JA.V., Minors; and CRYSTAL	§	
TRUITT, as next friend of S.M., a Minor	§	
Plaintiffs	§	
	§	
	8	CIVIL ACTION NO. 3:11-cv-229
<b>V.</b>	8	CIVIL ACTION NO. 3.11-CV-223
v.	§ §	CIVIL ACTION NO. 3.11-cv-229
v. CITY OF LA MARQUE, TEXAS;	\$ \$ \$	CIVIL ACTION NO. 3.11-CV-229
	\$ \$ \$	CIVIL ACTION NO. 3.11-cv-229
CITY OF LA MARQUE, TEXAS;	3 8 8 8	CIVIL ACTION NO. 3.11-cv-229
CITY OF LA MARQUE, TEXAS; FORMER CHIEF RICHARD PRICE;	3	CIVIL ACTION NO. 3.11-CV-229
CITY OF LA MARQUE, TEXAS; FORMER CHIEF RICHARD PRICE; RICHARD GARCIA; FOREST	» » » » » » »	CIVIL ACTION NO. 3.11-cv-229
CITY OF LA MARQUE, TEXAS; FORMER CHIEF RICHARD PRICE; RICHARD GARCIA; FOREST GANDY; MIKE KELEMAN; and	» « » « » « » « »	CIVIL ACTION NO. 3.11-cv-229

# PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S RECOMMENDATION TO GRANT DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

#### TO THE HONORABLE JUDGE HOYT:

Plaintiffs file the following Objections to the United States Magistrate Judge's Report and Recommendation Regarding Defendants' Motion to Dismiss for Failure to State a Claim. The Magistrate Judge, in recommending a grant of partial dismissal relating to Defendant Price and Defendant City of La Marque as to Plaintiffs' State Claims, construed Plaintiffs' live pleading as insufficient despite the facts pleaded and FRCP Rule 8. Accordingly, Plaintiffs urge the Court to overrule the Magistrate Judge's recommendations as to Defendant Price and to Plaintiffs' state law claims in relation to Defendant City of La Marque.

#### I. INTRODUCTION

Defendants have filed this motion pursuant to Federal Rule of Civil Procedure 12(b)(6)

alleging that Plaintiffs have failed to state a claim upon which relief may be granted. As the Magistrate's recommendation correctly states, the court must accept all well-pleaded facts as true, viewing them in the light most favorable to the Plaintiffs. The Magistrate's recommendation however, failed to apply the correct legal standard articulated. Proper application of the standards lead to the inescapable conclusion that Defendants' Motions must be denied. Accordingly, this Court should reject the Magistrate's recommendations that Defendants' Motions should be partially granted.

#### II. PLAINTIFFS' SPECIFIC OBJECTIONS

Plaintiffs specifically object and seek a *de novo* review of the following findings, conclusions and recommendations:

- That Plaintiffs did not adequately plead claims against Defendant Price pursuant to 42 U.S.C. § 1983. [Dkt. 24, pages 5-7].
- That Defendant Price would be entitled to "qualified immunity". [Dkt. 24, page 7].
- That Plaintiffs did not adequately plead claims against Defendant City of La Marque under state law. [Dkt. 24, page 12-13].
- That Defendant City of La Marque is protected by governmental immunity and no waiver of immunity has been provided under the Texas Tort Claims Act. [Dkt.24, page 12-13].
- The Recommendation to grant Defendant Price's Motion to Dismiss.
- The Recommendation to grant Defendant City of La Marque's Motion to Dismiss as to Plaintiffs' state law claims.

#### III. CONCLUSION

For the foregoing reasons, Plaintiffs urge the Court to overrule and reject, in part, Magistrate Judge Froeschner's Report and Recommendation Regarding Defendants' Motions to Dismiss and deny Defendants' Motions to Dismiss in full.

Respectfully submitted,

/s/ John D. Sloan, Jr.
JOHN D. SLOAN, JR.
Attorney in Charge
State Bar No. 18505100
Southern District of Texas No. 106566
jsloan@sloanfirm.com
J. RYAN FOWLER
State Bar No. 24058357
Southern District of Texas No. 1060803
rfowler@sloanfirm.com
SLOAN, BAGLEY, HATCHER & PERRY LAW FIRM
3000 Smith Street, Suite 4
Houston, Texas 77006
Telephone: (713) 520-8833

Telephone: (713) 520-8833 Facsimile: (713) 520-9933

ATTORNEYS FOR PLAINTIFFS, JOSLYNN TERRELL, INDIVIDUALLY and as REPRESENTATIVE OF THE ESTATE OF JAMAAL R. VALENTINE; ANGELA BUTLER, as next friend of J V and JA V, Minors; and CRYSTAL TRUITT, as next friend of S M, a Minor

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>nd</sup> day of October, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will automatically send email notification of said filing to the following counsel of record:

William S. Helfand Norman Ray Giles Chamberland, Hrdlicka, White, Williams & Martin 1200 Smith Street, Suite 1400 Houston, Texas 77002

Douglas D. Fletcher Keith A. Robb Fletcher, Farley, Shipmand & Salinas, L.L.P. 8750 N. Central Expressway, Suite 1600 Dallas, Texas 75231

> /s/ John D. Sloan, Jr. JOHN D. SLOAN, JR. J. RYAN FOWLER